

## THE CITY OF CLAYTON

Board of Aldermen  
City Hall – 10 N. Bemiston Avenue  
November 11, 2014  
7:00 p.m.

### Minutes

Mayor Sanger called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Michelle Harris, Cynthia Garnholz, Mark Winings, Joanne Boulton, Alex Berger III and Rich Lintz.

Mayor Sanger  
City Manager Owens  
City Attorney O'Keefe

**Alderman Winings moved to approve the October 28, 2014 minutes. Alderman Garnholz seconded.**

**The motion to approve the minutes passed unanimously on a voice vote.**

### PUBLIC REQUESTS AND PETITIONS

None

### A MOTION TO CONSIDER AN APPEAL FROM PLAN COMMISSION/ARCHITECTURAL REVIEW BOARD ACTION FOR 8118 WESTMORELAND AVENUE – NEW SINGLE FAMILY RESIDENCE

City Manager Owens reported that this is a this is an appeal submitted by Tom and Chandy Niemann, owners of 8126 Westmoreland Avenue, of the Plan Commission's/Architectural Review Board's decision to approve the site plan and architectural aspects associated with the proposed construction of a new single family residence at 8118 Westmoreland Avenue.

The proposed project consists of the demolition of an existing 1.5-story, 2,429-square-foot single-family residence and the construction of a 2-story, 5,063-square-foot single-family residence (not including the basement) measuring 27-feet 4.75-inches in height as measured from average existing grade to the mean elevation of the roof. The existing 434-square-foot detached garage with access from the rear alley will remain in use.

The site plan and architectural aspects of the proposed project were presented to the Plan Commission and Architectural Review Board on October 6, 2014. The site plan was approved by a vote of 5 to 0. The architectural aspects of the project were approved by a vote of 4 to 1.

Pursuant to Section No. 400.230 "Appeals", an aggrieved party may, within 15 days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decision of the Architectural Review Board. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error. Also, pursuant to Section 405.1090 "Appeals", an aggrieved party may, within fifteen (15) days of the decision for which redress is sought, file with the Board of Aldermen a written request for reconsideration and appeal of any decision of the Plan Commission. The written request must set forth in a concise manner the decision being appealed and all grounds known to the appellant as to wherein and why the decision is allegedly in error.

On October 21, 2014, the City received a letter dated October 21, 2014, from Tom & Chandy Niemann, adjoining property owners, appealing the Plan Commission and Architectural Review Board's decision to approve the proposed project. The appeal challenges the project's design and compatibility with the surrounding neighborhood.

Recommendation is to consider the appellants' written request for an appeal of the Plan Commission/Architectural Review Board's decision. The Board may consider the appeal on the record of the prior decision by the Architectural Review Board, or may at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances. The Board shall approve, modify or disapprove the request for appeal.

In further clarification Susan Istenes stated that generally speaking appeals are not a rehearing of the actual project application that was already reviewed and approved by the ARB. The Board should consider whether or not the ARB's actions were consistent with the criteria set forth in the Code (Urban Design District and Architectural Standards) and whether or not the proper procedures were followed. It is a fine line because as the Board they will have to have some understanding of the project and may formulate their own opinions about the design. However as noted it is up to the appellant to prove that the ARB approved the project in error.

The Board may consider the appeal on the record of the prior decision by the Architectural Review Board or may, at its sole discretion, receive additional evidence in such manner as it deems appropriate in light of the circumstances.

Chandy Nieman, appellant addressed the Board providing a PowerPoint presentation (available in the City Clerk's office) and summarizing the appeal that was presented to the Board. She urged the Board to vote in approval of the appeal.

Kevin Kerwin, HKW Architects, representing owners Gene and Dayle Norber, addressed the Board providing a PowerPoint presentation (available in the City Clerk's office) and also provided sample pieces of construction material in support of the October 6, 2014 ARB decision. He urged the Board to uphold the ARB decision

In response to the Board's question, in terms of percentage calculations regarding the gutter line and roof line, Susan Istenes explained that staff met with the architect and feels that it was just a misinterpretation on how to apply the calculation, but since has been straightened out.

In response to Mayor Sanger's question regarding the ARB comments regarding compatibility, Susan Istenes referred to the ARB October 6, 2014 Minutes and comments from member Jim Liberman who commented, "*that he is shocked about the rustic brick, but he is okay with it. He asked if any consideration was given to making the entire north corner glass.*" With regard to compatibility, the ARB chairman was very complimentary of the design of the house and she did not recall any statements that he made regarding incompatibility, Sally Cohn was complimentary to the design and Jim Liberman made the motion to approve as submitted.

In response to Mayor Sanger's question regarding the September 18, 2014 letter as referenced by Mr. Niemann, Louis Clayton explained that after staff reviewed the submittal for site plan review on ARB for the subject property he emailed the applicant a comprehensive list of plan deficiencies – those that pertained to the site plan, landscape plan and architectural renderings. The comments and questions pertain to specific criteria in the Urban Design District pertaining to roof forms, transitions in height, solid to void window ratios, orientation of windows and doors, number of materials, and percentage of materials on each elevation. Staff asked for the applicant to provide more information so that they could verify whether or not those criteria were being met. Staff also asked them to either revise the plans accordingly to meet the specified standard, to submit an explanation describing how the standard is met with the current design, or to request alternative compliance. In the applicant's resubmittal they addressed all of their questions and after reviewing the additional information it was staff's opinion that the

designs met all the criteria with the exception of percentage of secondary materials which were granted alternative compliance by the ARB, which satisfied staff's request for more information.

Ms. Istenes explained that the Code provide a provision that the ARB can utilize to exceed those thresholds established for this Overlay District – Alternative Compliance. The applicant will make an argument as to why they cannot comply and how it would impact the appearance of the house and how it still remains compatible. The architectural standards are primarily focused on the view from the street and also on how a house is positioned on a lot.

City Attorney O'Keefe asked that the Board take administrative notice and receive into evidence Mr. and Mrs. Nieman's presentation as well as Mr. Kerwin's (representative for the Norbers) so that all that information is in the record and before the Board - there was no objection from either party.

City Attorney O'Keefe asked that the Board take administrative notice and receive into evidence the files and records of this matter as it proceeded before the Architectural Review Board so that all that information is in the record and before the Board - there was no objection from either party.

Mayor Sanger ruled that all of the information is part of the official record.

Alderman Berger commented that the focus is determining whether or not the Plan Commission/ARB followed guidelines. He researched by reviewing the ARB minutes from 2011 to present day and discovered that there were 15 different properties in the Clayton Gardens UDD that went before the ARB. He pointed out that out of the 15 houses that were built there were 9 different colors (a process of variability). All 15 projects were approved, but not all unanimous. In terms of accent materials, brick plus one, 7 of the 15 properties that were reviewed by the ARB had two or more of the accent materials in the project lists. The ARB in those situations worked through that and again approved them. With regard to Alternative Compliance, there are two homes that were approved during this period of time and one home had 30% stucco on the rear elevation and one had 29% stucco façade on the front, both of those homes were approved through using the Alternative Compliance method. In looking at the new construction of single family properties over the last four years the process of the ARB was similar as it was with this property in his opinion based upon the data.

Mayor Sanger commented that the Board has spent as much time on this project as they have on any other projects; they have walked the neighborhood, studied, read minutes, queried staff, and also received a lot of emails – almost 50% equal in support and non-support of the project. He reminded the audience that this is not a question of popularity, but rather a question if the ARB did what they were supposed to do and followed the rules. He reminded the audience that Clayton is known for its neighbors and its neighborhoods and this issue has divided the neighborhood in terms of favor or not in favor of this house which is not the way it's done in Clayton. He hopes that all of the neighbors get together after all of this is finished and maintain the comradery.

Alderman Harris commented that the materials used will look very different from all of the homes in the neighborhood and urged the Board to think about that in their decision.

Ann Brown, 8304 Kingsbury, commented that Alderman Harris' comments were subjective views and not part of the decision making.

Gary Heifetz, 8146 Westmoreland, commented that he would like to emphasize the difference of the bricks, windows and stucco that is located on a couple of homes and varies from other homes in the neighborhood.

Robert Denlow, 5 Wydown Terrace, commented that a lot of new homes being built do not look like the ranch style and smaller homes of the original neighborhoods and that is changing. He questioned whether or not Alderman Winings' ARB vote against the project was due to Apex Oil (Novelly) being a client of his (Winings) law firm, Lewis Rice and if this should have been a conflict of interest.

Alderman Winings stated that he has already voted at the ARB meeting and denies any conflict of interest.

Steve Luby, 8125 Westmoreland, addressed the Board stating that he did a rehab construction on his home and conformed with the City's rules and regulations of maintaining the character to the neighborhood. He feels that the subject property design is modern and looks commercial.

Carl Lang, 8400 University Drive, addressed the Board stating that the neighborhood(s) is in need of a variety and that the new design will add to the neighborhood.

Kevin Powers, 8140 University Drive, addressed the Board stating that he is planning on doing an addition to his property and will expect some variances to future projects.

Scott Campbell, resident, addressed the Board stating that he is in favor of the new home and that it will not lower the value nor "spoil" the neighborhood. He said that the appellant has insufficient evidence to overturn the ARB ruling. He feels it is an exciting house and would like to see it built.

Gene Norber, owner/applicant, stated that their designs have been reviewed by staff and recommended to the ARB to be approved as submitted. As the staff reports indicates they have provided designs for their home to meet compatibility requirements in the established neighborhood. ARB and staff has said that the project is in conformance to the neighborhood and urged that the Board deny the appeal.

Mayor Sanger commented that in his own opinion he has a problem with the west side (wall) of the house as being a "blank wall".

Mr. Nieman stated that he has no issue with the west side (wall) of the house.

Alderman Boulton commented that in the beginning she (and others) had an issue with the construction of the home at 6431 Wydown, the architect in that instance did an excellent job of "massing." She said that although the home was contemporary it really does blend and fits well into the neighborhood. She feels that from everything she has heard this property has fulfilled the requirements including the fact that we will have to allow architects have alternate compliance.

Alderman Garnholz commented that she has looked at Section 410.285 and it states that "*Alternative Compliance is intended to apply in unusual circumstances that might arise where an alternative approach would provide a result that is equal to, or superior to that which would be provided by the approach outlined by the standards in this chapter*", and asked that this is kept in mind in terms of evaluating the project in terms of the alternative compliance and materials used.

**Alderman Harris moved to deny the appeal of the ARB decision for 8118 Westmoreland Avenue. Alderman Boulton seconded.**

**The motion passed 4-Ayes to 3-Nays on a roll call vote. Alderman Harris – Nay; Alderman Garnholz – Nay; Alderman Winings – Nay; Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; and Mayor Sanger – Aye.**

#### A MOTION – YEAR 2015 BOARD OF ALDERMEN MEETING SCHEDULE

The 2015 Board of Aldermen meeting schedule is presented for approval prior to posting. The following calendar dates are scheduled:

January 13 2015

July 14, 2015

January 16, 2015 (Strategic Planning Session)

July 17, 2015 (Strategic Planning Session)

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January 27, 2015

July 28, 2015

February 10, 2015

August 11, 2015

February 20, 2015 (Strategic Planning Session)

August 21, 2015 (Strategic Planning Session)

February 24, 2015

August 25, 2015

March 10, 2015

September 8, 2015

March 20, 2015 (Strategic Planning Session)

September 18, 2015 (Strategic Planning Session)

March 24, 2015

September 22, 2015 (*pending due to Yom Kippur*)

April 14, 2015

October 13, 2015

April 17, 2015 (Strategic Planning Session)

October 16, 2015 (Strategic Planning Session)

April 28, 2015

October 27, 2015

May 12, 2015

November 10, 2015

May 15, 2015 (Strategic Planning Session)

November 20, 2015 (Strategic Planning Session)

May 26, 2015

November 24, 2015

June 3-5, 2015 (BOA/Staff Retreat)

December 8, 2015

June 9, 2015

December 18, 2015 (Strategic Planning Session)

June 19, 2015 (Strategic Planning Session)

December 22, 2015

June 23, 2015

**Alderman Harris moved to approve the Board of Aldermen 2015 meeting dates. Alderman Garnholz seconded.**

**The motion passed unanimously on a voice vote.**

#### Other

Alderman Harris reported that during the Parks & Recreation Commission meeting MSD provided a storm water presentation for Anderson Park.

Alderman Winings reported that the Planning Commission reviewed the conceptual reviews of the Montgomery Bank Development.

Alderman Boulton reported that the Public Art Advisory Committee recently met with the Clayton Century Foundation.

Alderman Boulton also reported that the *C the Future* - Livable Community Team had a very good meeting today and that the Strategic Plan is complete.

Alderman Berger reported that the Uniformed Employees Retirement Fund is nearing the \$36 million range and it has seen a double digit growth. He also reported that the Uniformed Employees Retirement Fund is at \$14 million and also met and/or exceeded eight performance measurements goals.

Alderman Berger thanked Chief Thorp and Chief Murphy for an excellent informational letter to the residents and businesses. He also thanked all he served our Country - Veteran's Day.

Alderman Berger also noted that the city is losing a great employee Steve Meyer, Public Works, to the City of Des Peres.

**Alderman Lintz moved that Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15). Alderman Berger seconded the motion.**

**Alderman Harris – Aye; Alderman Garnholz – Aye; Alderman Winings – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; and Mayor Sanger – Aye.**

There being no further regular business the meeting was adjourned at 8:55 p.m.

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Mayor

ATTEST:

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City Clerk